

**Exhibit B**

1 CATHERINE A. CONWAY (SBN 98366)  
2 GREGORY W. KNOPP (SBN 237615)  
3 **AKIN GUMP STRAUSS HAUER & FELD LLP**  
4 2029 Century Park East, Suite 2400  
5 Los Angeles, California 90067-3012  
6 Telephone: 310-229-1000  
7 Facsimile: 310-229-1001  
8 cconway@akingump.com  
9 gknopp@akingump.com

10 Attorneys for Defendant Ernst & Young LLP

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN JOSE DIVISION

14 DAVID HO, on behalf of himself and  
15 others similarly situated and on behalf  
16 of the general public and DOES 1-20

17 Plaintiff,

18 v.

19 ERNST & YOUNG, LLP

20 Defendant.

Case No. CV 05-04867 JF

DEFENDANT ERNST & YOUNG  
LLP'S REQUEST FOR  
PRODUCTION OF DOCUMENTS TO  
PLAINTIFF DAVID HO, SET TWO

[Assigned for all purposes to the  
Honorable Jeremy Fogel,  
Department 3]

21 PROPOUNDING PARTY: DEFENDANT, ERNST & YOUNG LLP

22 RESPONDING PARTY: PLAINTIFF, DAVID HO

23 SET NO.: TWO

24  
25  
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28 6090866

DEFENDANT ERNST & YOUNG LLP'S REQUEST  
FOR PRODUCTION OF DOCUMENTS TO  
PLAINTIFF DAVID HO, SET TWO

1 TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

2 1. Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Defendant  
3 Ernst & Young, LLP, by and through its attorneys, Akin Gump Strauss Hauer & Feld,  
4 LLP, requests that plaintiff David Ho produce documents as described herein at the  
5 office of Akin Gump Strauss Hauer & Feld, LLP, 2029 Century Park East, Suite 2400,  
6 Los Angeles, California 90067, and permit inspection and copying of same. Plaintiff  
7 must respond and comply within thirty (30) days of the service of this Request for  
8 Production.

9 **DEFINITIONS AND INSTRUCTIONS**

10 2. Produce originals of the documents requested herein, arranged and labeled  
11 according to the number of the demand to which they respond.

12 3. If any document is not produced because a privilege is claimed, please  
13 identify each such document (by date, title, author, addressees, persons copied, number  
14 of pages and subject matter), the number of the demand that calls for its production, and  
15 the privilege claimed.

16 4. The use of the singular form of any word used herein includes the plural  
17 and vice versa.

18 5. This Request for Production shall be deemed continuing so as to require  
19 further and supplemental production promptly if plaintiff receives, generates or  
20 discovers additional documents called for herein between the time of original  
21 production and the time of any evidentiary hearing.

22 6. The terms "PLAINTIFF," "YOU," AND "YOUR," as used herein mean  
23 David Ho, or any person, including attorneys and law firms, agents, or agents of  
24 plaintiff's law firm, acting or purporting to act on behalf of David Ho.

25 7. The term "ERNST & YOUNG" as used herein means defendant Ernst &  
26 Young LLP and its California offices where plaintiff and any other putative class  
27

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DEFENDANT ERNST & YOUNG LLP'S REQUEST  
FOR PRODUCTION OF DOCUMENTS TO  
PLAINTIFF DAVID HO, SET TWO

1 member were employed, and any person acting or purporting to act on behalf of Ernst &  
2 Young.

3 8. The term "PERSON" as used herein means all individuals or entities,  
4 including, but not limited to, government agencies, independent establishments, natural  
5 persons, labor unions, groups of corporations (whether for profit or non-profit),  
6 partnerships, associations, joint ventures, and any other incorporated or unincorporated  
7 business or social entity.

8 9. The term "DOCUMENT" as used herein means all written or recorded  
9 material of any kind or character, as defined in Federal Rules of Evidence Section 1001,  
10 in your possession, custody or subject to your control, or within your knowledge,  
11 including, without limitation, statements, letters, correspondence, telegrams,  
12 memoranda, notes, records, reports, studies, interoffice communications, calendar and  
13 diary entries, microfilm, bulletins, circulars, pamphlets, messages, invoices, maps,  
14 charts, tabulations, summaries or abstracts, video or audio recordings, work sheets,  
15 surveys, graphs, statistics, tables, photographs, rules, regulations, opinions, orders,  
16 interpretations, guidelines, any notes or writings pertaining to any meetings, or other  
17 oral or telephone communication, electronic mail, any data or information stored or  
18 saved on any computer hard disk, floppy disk, tape, or other medium, any computer  
19 print-outs, computer software or code, whether in machine or human readable form on  
20 any medium, and all other documentary material, including non-identical copies  
21 (whether different from the original because of any alterations, notes, comments or other  
22 material contained thereon or attached thereto or otherwise, and whether a draft or final  
23 version).

24 10. The terms "RELATE" or "REFER TO" as used herein mean to make a  
25 statement about, discuss, describe, reflect, identify, deal with, consist of, explain,  
26 comprise, or in any way pertain in whole or in part, directly or indirectly, to the subject.  
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DEFENDANT ERNST & YOUNG LLP'S REQUEST  
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PLAINTIFF DAVID HO, SET TWO

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11. The term "COMMUNICATION" as used herein means every manner or means of disclosure, transfer or exchange of information, whether oral, electronic, by document, or otherwise, and whether face to face, in a meeting, by telephone, mail, electronic mail, personal delivery or otherwise.

12. The term "ERNST & YOUNG EMPLOYEE" as used herein means any person employed by Ernst & Young, in any capacity, either currently or at any time in the past.

13. The term "COMPLAINT" as used herein means the original complaint, and all subsequent amendments thereto, initially filed in the Superior Court of the State of California in the County of Santa Clara, and now pending before the United States District Court for the Northern District of California.

### **REQUESTS FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO. 31**

ALL DOCUMENTS that have been generated in response to the "WITNESS STATEMENT INFORMATION FORM" posted by YOU on the internet at the website [www.eylawsuit.com](http://www.eylawsuit.com) or any other website, including but not limited to such DOCUMENTS that provide contact information for individuals who have filled out the form and any responses to the solicitation for "Advise When You Started and Stopped Working for EY, Your Position, the Office You Worked in, the Department You Worked in, and List the Typical Work Tasks That You Performed and For Each Task the Percentage of Your Total Work Time Spent on That Task."

#### **REQUEST FOR PRODUCTION NO. 32**

All DOCUMENTS that YOU have prepared as Witness Statements and sent for approval to an individual that provided information to YOU.

6090866

4

DEFENDANT ERNST & YOUNG LLP'S REQUEST  
FOR PRODUCTION OF DOCUMENTS TO  
PLAINTIFF DAVID HO, SET TWO

1 **REQUEST FOR PRODUCTION NO. 33**

2 All DOCUMENTS that YOU have received from individuals to whom you have  
3 sent Witness Statements for review and approval, including but not limited to signed  
4 Witness Statements and Witness Statements with comments, corrections, or changes.

5 Dated: May 25, 2007

6 **AKIN GUMP STRAUSS HAUER & FELD LLP**  
7 **CATHERINE A. CONWAY**  
8 **GREGORY W. KNOPP**

9 By 

10 Attorneys for Defendant Ernst & Young LLP  
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**DEFENDANT ERNST & YOUNG LLP'S REQUEST  
FOR PRODUCTION OF DOCUMENTS TO  
PLAINTIFF DAVID HO, SET TWO**

EXHIBIT

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century Park East, Suite 2400, Los Angeles, California 90067.

On May 25, 2007 I served the foregoing document(s) described as:

**DEFENDANT ERNST & YOUNG LLP'S REQUEST FOR PRODUCTION  
OF DOCUMENTS TO PLAINTIFF DAVID HO, SET TWO**

on the interested party(ies) below, using the following means:

Mark R. Thierman, Esq.  
THIERMAN LAW FIRM  
7287 Lakeside Drive  
Reno, Nevada 89511  
Telephone: 775.284.1500  
Facsimile: 775.703.5027

Leon Greenberg, Esq.  
Attorney at Law  
633 South 4th Street, Suite 9  
Las Vegas, Nevada 89101  
Telephone: 702.383.6085  
Facsimile: 702.385.1827

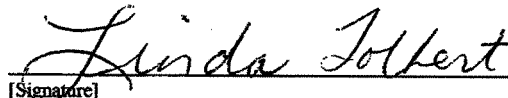
☒ BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 25, 2007 Los Angeles, California.

Linda Tolbert

[Print Name of Person Executing Proof]

  
[Signature]

PROOF OF SERVICE

EXHIBIT

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## **Exhibit C**



1 Mark R. Thierman, SB# 72913  
Leon Greenberg, SB# 226253  
2 THIERMAN LAW FIRM  
7287 Lakeside Drive  
3 Reno, NV 89511  
Telephone (775) 284-1500

4 Attorneys for Plaintiffs

5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA

7 DAVID HO, on behalf of himself  
and all others similarly situated  
8 and on behalf of the general  
public and DOES #1-20,

Case No. 05-04867-JF/HRL

9 Plaintiffs,

10  
11 -against-

12 ERNST & YOUNG LLP

13 Defendants.

14 -----X  
15 PLAINTIFF'S RESPONSE TO DEFENDANT'S  
16 SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

17 GENERAL OBJECTIONS

18 Plaintiffs object to the production of the documents sought to  
19 the extent that such production is unduly burdensome, seeks  
20 privileged information, or seeks the production of materials that  
21 are neither relevant nor reasonably likely to lead to the discovery  
22 of relevant and admissible evidence.

23 Plaintiffs object to the requested production to the extent  
24 that it claims to impose a requirement upon the plaintiffs that they  
25 incur the costs of obtaining materials that they have a legal right  
26 to possess but which they do not currently have in their possession,  
27 to the extent that such materials are properly subject to production  
28 the plaintiffs do not withhold them from production and will

1 cooperate with the defendants by authorizing their production, but  
2 plaintiffs shall not bear the costs of such production.

3 Plaintiffs object to the requested production to the extent it  
4 calls upon them to interpret or determine what documents have a  
5 particular requested meaning or significance and act in good faith  
6 in producing all documents that they believe are responsive taking  
7 the broadest possible view of defendant's requests.

8 Plaintiffs object to the requested production to the extent  
9 that it calls upon them to classify, review, or advise the defendant  
10 about the contents of documents previously, or henceforth, produced  
11 in this litigation by defendant or any co-defendants and plaintiffs  
12 decline to so advise the defendants about the contents of such  
13 production by defendant or any co-defendants on the grounds that  
14 such effort by the plaintiffs is unduly burdensome and not required  
15 by the Federal Rules of Civil Procedure.

17 RESPONSES

18 REQUEST FOR PRODUCTION NO. 1

19 All DOCUMENTS that have been generated in response to the  
20 "WITNESS INFORMATION FORM" posted by YOU on the internet at the  
21 website www.eylawsuit.com or any other website, including, but not  
22 limited to such DOCUMENTS that provide contact information for  
23 individuals who have filled out the form and any responses to the  
24 solicitation for "Advise When You Started and Stopped Working for  
25 EY, Your Position, the Office You Worked in, the Department You  
26 Worked in, and List the Typical Work Tasks That You Performed and  
27 For Each Task the Percentage of Your Total Work Time Spent on That  
28 Task."

1 RESPONSE: Request is objected to on the following grounds:

2 1. Attorney Work Product Privilege in that all such documents  
3 have been generated as a result of the plaintiff's counsel's  
4 investigative efforts in this case and/or contain impressions,  
5 notes, observations and/or analysis created by plaintiff's counsel.

6 2. Attorney Client Privilege in that all such documents are  
7 communications with persons who either have retained plaintiff's  
8 counsel for the purposes of legal representation (and engaged in  
9 such communication for that purpose) or engaged in such  
10 communications for the purpose of considering whether they wished to  
11 secure legal representation by plaintiff's counsel. Such attorney  
12 client privilege also extends to all such persons because they are  
13 members of the putative class of plaintiffs in this case. Even  
14 though no plaintiff class has yet been certified in this case, such  
15 communications are part of a process whereby such persons consider  
16 whether to assist in the effort to have this case certified as a  
17 class action and possibly be represented by plaintiff's counsel.

18 3. Informant Privilege, in that the identify of the persons who  
19 engaged in such communications, which communications contain  
20 information alleging violations of the labor laws of the State of  
21 California, is protected against involuntary disclosure as a matter  
22 of public policy. Such privilege is necessary to guard against the  
23 chilling effect such involuntary disclosure would have and the  
24 exposure of such persons to possible retaliation.  
25

26  
27 In respect to a privilege log, plaintiff's counsel confirms  
28 that there exists at least one document containing information on  
the requested communications, but declines to otherwise state the

1 number or length or dates or manner or contents of such  
2 communications, or the parties to such communications (besides  
3 plaintiff's counsel, Leon Greenberg, Esq.), as the disclosure of  
4 that information would infringe upon the aforesaid privileges  
5 against disclosure. All such documents are maintained in electronic  
6 form by plaintiff's counsel.

7 Plaintiff also objects to the requested production on the  
8 grounds of burdensomeness in that the identity of all putative  
9 plaintiff class members is known to the defendant.

10 REQUEST FOR PRODUCTION NO. 2

11 All DOCUMENTS that YOU have prepared as Witness Statements and  
12 sent for approval to an individual that provided information to YOU.

13 RESPONSE: Request is objected to on the following grounds:

14 1. Attorney Work Product Privilege in that all such documents  
15 have been generated as a result of the plaintiff's counsel's  
16 investigative efforts in this case and/or contain impressions,  
17 notes, observations and/or analysis created by plaintiff's counsel.

18 2. Attorney Client Privilege in that all such documents are  
19 communications with persons who either have retained plaintiff's  
20 counsel for the purposes of legal representation (and engaged in  
21 such communication for that purpose) or engaged in such  
22 communications for the purpose of considering whether they wished to  
23 secure legal representation by plaintiff's counsel. Such attorney  
24 client privilege also extends to all such persons because they are  
25 members of the putative class of plaintiffs in this case. Even  
26 though no plaintiff class has yet been certified in this case, such  
27 communications are part of a process whereby such persons consider  
28

1 whether to assist in the effort to have this case certified as a  
2 class action and possibly be represented by plaintiff's counsel.

3 3. Informant Privilege, in that the identify of the persons who  
4 engaged in such communications, which communications contain  
5 information alleging violations of the labor laws of the State of  
6 California, is protected against involuntary disclosure as a matter  
7 of public policy. Such privilege is necessary to guard against the  
8 chilling effect such involuntary disclosure would have and the  
9 exposure of such persons to possible retaliation.  
10

11 In respect to a privilege log, plaintiff's counsel  
12 confirms that there exists at least one responsive document but  
13 declines to otherwise state the number or length or dates or  
14 document contents or provide other information about such document,  
15 as the disclosure of that information would infringe upon the  
16 aforesaid privileges against disclosure. All such documents are  
17 maintained in electronic form by plaintiff's counsel.

18 Plaintiff also objects to the requested production on the  
19 grounds of burdensomeness in that the identity of all putative  
20 plaintiff class members is known to the defendant.

21 REQUEST FOR PRODUCTION NO. 3

22 All DOCUMENTS that YOU have received from individuals to whom  
23 you have sent Witness Statements for review and approval, including  
24 but not limited to signed Witness Statements and Witness Statements  
25 with comments, corrections or changes.  
26

27 RESPONSE: Request is objected to on the following grounds:

28 1. Attorney Work Product Privilege in that all such documents  
have been generated as a result of the plaintiff's counsel's

1 investigative efforts in this case and/or contain impressions,  
2 notes, observations and/or analysis created by plaintiff's counsel.

3       2. Attorney Client Privilege in that all such documents are  
4 communications with persons who either have retained plaintiff's  
5 counsel for the purposes of legal representation (and engaged in  
6 such communication for that purpose) or engaged in such  
7 communications for the purpose of considering whether they wished to  
8 secure legal representation by plaintiff's counsel. Such attorney  
9 client privilege also extends to all such persons because they are  
10 members of the putative class of plaintiffs in this case. Even  
11 though no plaintiff class has yet been certified in this case, such  
12 communications are part of a process whereby such persons consider  
13 whether to assist in the effort to have this case certified as a  
14 class action and possibly be represented by plaintiff's counsel.

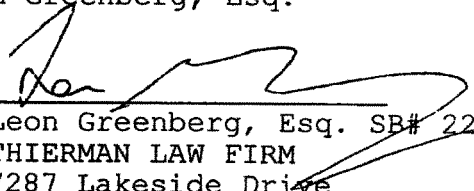
15  
16       3. Informant Privilege, in that the identify of the persons who  
17 engaged in such communications, which communications contain  
18 information alleging violations of the labor laws of the State of  
19 California, is protected against involuntary disclosure as a matter  
20 of public policy. Such privilege is necessary to guard against the  
21 chilling effect such involuntary disclosure would have and the  
22 exposure of such persons to possible retaliation.

23  
24       In respect to a privilege log, plaintiff's counsel confirms  
25 that there exists at least one responsive document but declines to  
26 otherwise state the number or length or dates or document contents  
27 or provide other information about such document, as the disclosure  
28 of that information would infringe upon the aforesaid privileges  
against disclosure.

1 Plaintiff also objects to the requested production on the  
2 grounds of burdensomeness in that the identity of all putative  
3 plaintiff class members is known to the defendant.  
4

5 Dated this 26th day of June, 2007  
6

7 Thierman Law Firm  
8 Leon Greenberg, Esq.

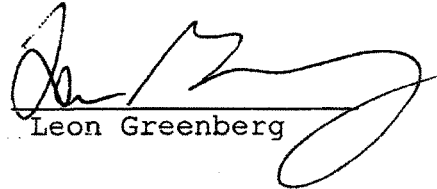
9 By:   
10 Leon Greenberg, Esq. SB# 226253  
11 THIERMAN LAW FIRM  
12 7287 Lakeside Drive  
13 Reno, NV 89511  
14 (775) 284-1500  
15 Attorney for Plaintiff  
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CERTIFICATE OF MAILING

I hereby certify that on the 26TH day of JUNE, 2007, I mailed a copy of the foregoing PLAINTIFF'S RESPONSE TO DEFENDANT'S SECOND SET OF REQUESTS FOR DOCUMENTS in a sealed envelope, to the following counsel of record and that postage was fully prepaid thereon:

Akin, Gump, Strauss, Hauer & Feld LLP  
2029 Century Park East # 2400  
Los Angeles, CA 90067  
Attention: Catherine Conway, Esq.

  
Leon Greenberg



## **Exhibit D**

**AKIN GUMP  
STRAUSS HAUER & FELD LLP**

Attorneys at Law

**GREGORY W. KNOPP**  
310.552.6436/fax: 310.229.1001  
gknopp@akingump.com

July 26, 2007

**VIA FACSIMILE AND REGULAR MAIL**

Leon Greenberg, Esq.  
Attorney at Law  
633 South 4th Street, Ste. 9  
Las Vegas, Nevada 89101

Re: *Ho v. Ernst & Young LLP*

Dear Mr. Greenberg:

We write regarding Plaintiff's Response to Defendant Ernst & Young LLP's Second Request for Production of Documents. Although we are prepared to file a motion to compel on the grounds discussed below, we hope that the parties can reach agreement on the production of this highly relevant discovery matter.

Defendant's Second Request contained three requests for production of documents (collectively, the "Requests"). Request No. 31 seeks documents generated in response to the questionnaire entitled "Witness Statement Information Form" posted on the "www.eylawsuit.com" website. In Request No. 32, Defendant seeks all witness statements sent to individuals providing information to you. Finally, Request No. 33 seeks witness statements you received from individuals providing information, whether in final signed form, or with corrected factual information.

Plaintiff has lodged identical, boilerplate objections to the Requests on four grounds – attorney-client privilege, attorney work product, the informant privilege, and burden. Further, although Plaintiff acknowledges that there are, in Plaintiff's possession, documents responsive to Defendant's requests, Plaintiff has refused to produce a privilege log.

At least two of Plaintiff's objections can be easily rejected. Plaintiff asserts a burdensomeness objection on the ground that, "the identity of all putative class members is known to the defendant." Defendant, however, has not requested a list of putative class members. Rather, it seeks documents and information that individuals have provided to Plaintiff. Defendant has no easier way to obtain these documents than by requesting them from Plaintiff. Further, Plaintiff admits that "all such documents are maintained in electronic form by plaintiff's counsel." A burdensome objection is not appropriate given Plaintiff's ready access to the responsive documents.

AKIN GUMP  
STRAUSS HAUER & FELD LLP  
Attorneys at Law

Leon Greenberg, Esq.  
July 26, 2007  
Page 2

Plaintiff's assertion of the informant privilege also is baseless. California Evidence Code § 1041, which codifies the informant privilege under California law, only applies to public entities. There is no basis here to assert the informant privilege here.

We address the balance of Plaintiff's objections below.

Documents Generated In Response to Web Questionnaire

First, documents generated from the web questionnaires, including the completed questionnaires, are not protected by the attorney-client privilege. As you know, there has not been a class certified in this action. It is well settled under California law that putative class members are not considered "clients" for purposes of the attorney-client privilege. See, e.g. Atari, Inc. v. Superior Court, 166 Cal.App.3d 867, 873 (Cal.App.3d 1985) (rejecting argument that putative class members are represented by plaintiff's counsel); Babbitt v. Albertson's Inc., 1993 WL 128089, \*2 (N.D.Cal. 1993) (citing Atari with approval). Plaintiff's suggestion that the putative class members' expectation of confidentiality precludes disclosure has also been squarely rejected. *Id.* at 517.

Even were putative class members to be considered clients, "factual information conveyed to an attorney by a client is not shielded from discovery by the attorney-client privilege." Morisky v. Public Service Electric and Gas Co., 191 F.R.D. 419, 424 (D.N.J. 2000) citing Penk, 99 F.R.D. at 516. Request No. 31 seeks purely factual information provided in response to a non-confidential questionnaire and thus would not invade the attorney-client privilege even if the privilege applied.

Second, the documents related to the questionnaire cannot be considered attorney work product. Although Federal Rule of Civil Procedure 26(b)(3) protects an attorney's "mental impressions, conclusions, opinions, or legal theories," Rule 26(b)(3) does not prevent disclosure of factual information directly from witnesses. See Dobbs v. Lamonts Apparel, Inc., 155 F.R.D. 650, 652 (D. Alaska 1994) ("The knowledge held by [] third parties is not privileged...What a witness "knows" is not the work of counsel."). Moreover, any "mental impressions" or "legal theories" reflected in the questionnaire have already been publicly disclosed via the internet and therefore cannot justify your assertion of work product protection. The factual information provided in response to the questionnaire is therefore discoverable.

As such, Ernst & Young requests that Plaintiff immediately produce documents responsive to Request No. 31.

AKIN GUMP  
STRAUSS HAUER & FELD LLP  

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Attorneys at Law

Leon Greenberg, Esq.  
July 26, 2007  
Page 3

Witness Statements

For the same reasons discussed above, Plaintiff cannot assert the attorney-client privilege with respect to documents responsive to Requests Nos. 32 and 33. In any event, Plaintiff has no basis to refuse to produce a privilege log. Federal Rule of Civil Procedure 26(b)(5)(A) requires a party claiming privilege or work product protection to, "describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection." The information Plaintiff seeks to protect (e.g., the "number or length or dates or manner") is not entitled to protection and should be provided on a privilege log that allows Defendant, and if necessary the Court, to evaluate Plaintiff's privilege claims as anticipated by Rule 26(b)(5)(A).

Plaintiff is also reminded of his obligation to supplement his initial disclosures. FRCP 26(e)(1). As you know, Plaintiff is under a continuing obligation to disclose, "the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses...." FRCP(a)(1)(A).

We appreciate your immediate response. Absent Plaintiff's production of the responsive discovery material and a satisfactory privilege log, Defendant will be forced to seek a motion to compel production of documents responsive to the Requests.

Sincerely,

  
Gregory W. Knopp

## Confirmation Report-Memory Send

Time : 07-Jul-26 05:17pm  
 Tel line 1 : 3102291001  
 Name : AKIN GUMP STRAUSS HAUER & FELD

Job number : 908  
 Date : Jul-26 05:15pm  
 To : 010863#601659#0004#17023851827#  
 Document Pages : 04  
 Start time : Jul-26 05:15pm  
 End time : Jul-26 05:17pm  
 Pages sent : 04  
 Job number : 908

**FAXED**

\*\*\* SEND SUCCESSFUL \*\*\*

**AKIN GUMP  
 STRAUSS HAUER & FELD LLP**  
 Attorneys at Law

## FAX TRANSMISSION

July 26, 2007

To	Company	Fax	Phone
Leon Greenberg, Esq.	Law Offices	(702) 385-1827	(702) 383-6085
<b>From:</b> Gregory W. Knopp, Esq. <b>Total Pages:</b> 4 <b>Direct line:</b> 310.552.6436 <b>Re:</b> Ho v. Ernst & Young, LLP <b>Message:</b>			

601659 0004/010863  
 Floor: 22nd  
☒ Return fax via Interoffice Mail

Sender's email: gknopp@akgump.com  
 Secretary: Sharon  
☐ Hold fax for pickup

Sender's fax: 310.229.1001  
 Fax: 4-3013  
 Fax Operation Verification: \_\_\_\_\_

The information contained in this facsimile message is attorney-client privileged and confidential, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us by mail at the address below.

2028 Century Park East, Suite 2400 / Los Angeles, California 90067-3012 / 310.229.1000 / fax: 310.229.1001 / akgump.com

## **Exhibit E**

**LEON GREENBERG**  
**ATTORNEY AT LAW**  
A Professional Corporation  
633 South 4<sup>th</sup> Street - Suite 9  
Las Vegas, Nevada 89101  
(702) 383-6085

Member Nevada, California,  
New York and New Jersey Bars

Fax: (702) 385-1827

July 27, 2007

Akin, Gump, Strauss, Hauer & Feld LLP  
2029 Century Park East # 2400  
Los Angeles, CA 90067

Attention: Gregory W. Knopp, Esq.

VIA FAX AND FIRST CLASS MAIL

**Re: David Ho v. Ernst & Young**

Dear Mr. Knopp:

I am in receipt of your letter of July 26, 2007.

All of the communications at issue were made for the purpose of investigating representation by counsel. Indeed, a number of persons have affirmatively agreed to retain me as their counsel as a result of, or in conjunction with, such communications. As a result, all such communications are absolutely privileged as attorney and (at least prospective) client communications.

I cannot provide a privilege list. The identities of the persons who have consulted with me to possibly secure legal representation are privileged. I may not disclose those identities until such time (if any) that those persons agree to become parties plaintiff to this case or otherwise consent to such public disclosure. Nor should I be compelled to identify how many persons have sought my counsel as an attorney or the dates of such consultations.

By way of a compromise, I am certainly willing to agree to a

Page 1 of 2

EXHIBIT

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PAGE

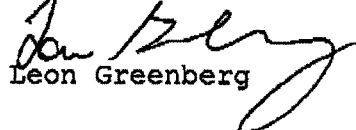
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notification to such persons of their right to consent to such disclosures. This would be similar to the notifications previously performed in this case in respect to the disclosure of class members' names and addresses. We would agree upon a notification letter that I would dispatch to all persons who have contacted me in the manner outlined in the defendant's discovery request. The letter would advise them that they can, if they wish, consent to have their communications with me disclosed to Ernst and Young. In as much as they are the ultimate holders of the attorney-client privilege at issue (they can waive it, I cannot), I do not see how I can, in compliance with my ethical duties, offer any other compromise.

I would also note that my proposed compromise goes far beyond any duty that the Court should impose upon me. I offer it simply in an attempt to avoid burdening the Court with pointless motion practice over this issue. The individuals at issue are not my captives, they are already aware of their right to contact Ernst and Young or its counsel and waive their right to keep their communications with me confidential.

I remain,

Very truly yours,

  
Leon Greenberg

cc.: Mark Thierman, Esq.



**LEON GREENBERG**  
**Professional Corporation**  
**Attorney at Law**  
**633 South 4<sup>th</sup> Street - Suite 9**  
**Las Vegas, NV 89101**  
**(702) 383-6085**

**Member Nevada, California**  
**New York and New Jersey Bars**

FAX TRANSMISSION COVER SHEET

July 27, 2007

To:

Akin, Gump, Strauss, Hauer & Feld LLP  
2029 Century Park East # 2400  
Los Angeles, CA 90067

Attention: Catherine A. Conway, Esq.  
Gregory W. Knopp, Esq.  
Adam Spiewak, Esq.  
Stephanie Der, Esq.

VIA FAX 310-229-1001

TWO PAGES FOLLOW

Re: David Ho v. Ernst & Young  
CV 05-04867 JF

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This fax transmission is intended for the above recipient only and is to be considered confidential. The information contained in this transmission is not to be used or distributed by any person other than the above recipient. If you received this transmission in error please contact this office at once.

## **Exhibit F**

AKIN GUMP  
STRAUSS HAUER & FELD LLP

Attorneys at Law

Anastasia M. Boles  
310.229.1041/fax: 310.229-1001  
aboles@akingump.com

August 6, 2007

VIA FACSIMILE AND REGULAR MAIL

Leon Greenberg, Esq.  
Attorney at Law  
633 South 4th Street, Ste. 9  
Las Vegas, Nevada 89101

Re: *Ho v. Ernst & Young LLP*

Dear Mr. Greenberg:

We write in response to your correspondence dated July 27, 2007.

You have provided no legal support for your refusal to produce a privilege log for documents responsive to Request No. 31. Federal Rule of Civil Procedure 26(b)(5)(A) clearly requires the preparation of a privilege log for all documents withheld on privilege grounds. Under California law, the client identity and date of privileged communication are not covered by the attorney-client privilege. *See, e.g., Nowell v. Superior Court*, 223 Cal. App. 2d 652, 655 (1963) ("there is no privilege as to the fact that an attorney-client relationship exists inasmuch as a showing to this effect is the very foundation of the privilege"); *Liew v. Breen*, 640 F.2d 1046, 1049 (9th Cir. 1981) (applying California law) ("[a]s a general proposition, client identity and fee arrangements are not protected in California by the attorney-client privilege").

In fact, Ninth Circuit precedent is clear that failure to produce a privilege log by itself constitutes waiver of the asserted privilege. *Thelen Reid & Priest LLP v. Marland*, 2007 WL 578989 (N.D.Cal., Feb. 21, 2007) ("The law is well settled that failure to produce a privilege log or production of an inadequate privilege log may be deemed waiver of the privilege.") *citing Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont*, 408 F.3d 1142 (9th Cir. 2005).

Moreover, in your letter, you declined to address our request for a privilege log detailing documents responsive to Requests Nos. 32 and 33 withheld on the basis of attorney-client privilege. Therefore, we assume a privilege log is forthcoming concerning documents responsive to those requests.

We share your desire to avoid bringing another discovery dispute before the Court. The compromise you have offered, however, is unsupported by legal precedent. If you can identify legal support for your contention, we would be happy to consider it. Otherwise, unless we

EXHIBIT F PAGE 33

AKIN GUMP  
STRAUSS HAUER & FELD LLP  

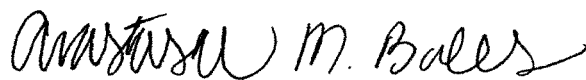
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Attorneys at Law

Leon Greenberg, Esq.  
August 6, 2007  
Page 2

receive a satisfactory privilege log for all documents withheld on the basis of privilege by  
Monday, August 13, 2007, we will be forced to bring a motion to compel.

Sincerely,



Anastasia M. Boles

EXHIBIT F PAGE 34

## Confirmation Report - Memory Send

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 Date & Time: Aug-06-07 14:04  
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 Line 2 :  
 E-mail :  
 Machine ID :

Job number : 057  
 Date : Aug-06 14:03  
 To : 010863#601659#0004#17023851827  
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 Start time : Aug-06 14:03  
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Job number : 057 \*\*\* SEND SUCCESSFUL \*\*\*

**AKIN GUMP  
 STRAUSS HAUER & FELD LLP**  
 Attorneys at Law

## FAX TRANSMISSION

August 6, 2007

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Leon Greenberg, Esq.	Law Offices	(702) 385-1827	(702) 383-6085
<b>From:</b> Anastasia M. Boles, Esq. <b>Total Pages:</b> 3 <b>Direct line</b> (310) 552-6673 <b>Re:</b> Ho v. Ernst & Young, LLP <b>Message:</b>			

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EXHIBIT F PAGE 35